

Daily Foods, Inc. and its insurance carrier, Workers Compensation Fund (referred to jointly as “Daily” hereafter), ask the Utah Labor Commission to review Administrative Law Judge Lima's award of benefits to S. B. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

### **BACKGROUND AND ISSUE PRESENTED**

On January 12, 2004, Mr. B. filed an application with the Commission to compel Daily to pay workers' compensation benefits for a back injury Mr. B. allegedly suffered while working for Daily on January 15, 2002. Daily responded to Mr. B.'s application by asserting, among other things, that Mr. B.'s claim was barred because he had failed to provide timely notice of his alleged work accident.

An evidentiary hearing was held on Mr. B.'s claim on August 11, 2004. Then, on February 10, 2005, Judge Lima issued her decision finding that Mr. B. had given timely notice of his accident to Daily and was otherwise eligible for benefits.

Daily now asks the Commission to review Judge Lima's finding that Daily received timely notice of Mr. B.'s accident.

### **FINDINGS OF FACT**

The Commission finds the following facts relevant to the question of whether Mr. B. provided timely notice of his accident to Daily.

As a 1999 immigrant to the United States from Bosnia, Mr. B.'s native language is Bosnian. He has a limited ability to speak English, and a somewhat greater capacity to understand that language.

Mr. B. began work at Daily during August 1999. A large part of the workforce at Daily is also of Bosnian origin. Several of these co-workers were able to speak both Bosnian and English. From time to time, these bilingual employees translated between Mr. B. and Daily management.

Mr. B.'s direct supervisor was Mr. Austin. The two men were on friendly terms and communicated on a regular basis, either in English for simple conversations, or through an interpreter for technical or complex communications.

Over time, Mr. B. was promoted to assistant line supervisor, then line supervisor. In his supervisory capacity, he received training in handling work-related injuries. Daily also posted Bosnian-language posters that provided information about such matters. Mr. B. understood that

work-related injuries had to be reported to management.

Mr. B. alleges that he injured his back while working at Daily on January 15, 2002. He also alleges that he reported the accident and injury to Mr. Austin within a few days. Mr. B.'s wife has testified she was present at the conversation; according to Mrs. B., she could tell that Mr. Austin did not understand what Mr. B. was telling him about his accident. For his part, Mr. Austin denies receiving any information regarding Mr. B.'s alleged accident. Daily asserts that it received no notice of Mr. B.'s alleged work accident and injury until several months after Mr. B. had left work at Daily, which was more than a year after the date of his alleged accident and back injury.

Two months after the alleged back injury, Mr. B. was involved in another accident that resulted in injury to one of his eyes. He immediately reported this injury to his supervisor through a translator.

During May 2003, Mr. B. was demoted from his supervisory position. Rather than accept the demotion, he quit work at Daily. Nine months later, he filed his application seeking benefits for the alleged back injury of January 15, 2002.

Based on the foregoing, the Commission finds that Mr. B. did not notify Daily of his alleged work-related accident within 180 days of the date of the alleged accident. Mr. B. knew that he must report work accidents to the employer. At the time of his eye injury, he actually demonstrated his ability to properly report work accidents. The Commission also notes that Mr. B. obtained treatment of his back outside the workers' compensation system for a long period of time, and only asserted that the back injury was work-related after he had left Daily's employment.

In finding that Mr. B. did not provide timely notice to his employer, the Commission has considered the language barriers that existed between Mr. B. and his employer. The Commission also notes the testimony of Mrs. B. that her husband did report his accident. Nevertheless, after weighing all the evidence, the Commission concludes that the preponderance of evidence establishes Mr. B. did not report his alleged work accident and back injury to his employer within 180 days from the date of the injury.

### **DISCUSSION AND CONCLUSION OF LAW**

Section 34A-2-407 of the Utah Workers' Compensation Act bars an employee from claiming workers' compensation benefits unless the employee notifies the employer of his or her injury within 180 days from the date on which the injury occurred. Because Mr. B. did not notify his employer within the 180-day period allowed by §34A-2-407, the Commission concludes that Mr. B.'s claim is now barred.

### **ORDER**

The Commission grants Daily's motion for review, sets aside Judge Lima's decision, and denies Mr. B.'s claim for workers' compensation benefits. It is so ordered.

Dated this 29<sup>th</sup> day of August, 2005.

R. Lee Ellertson, Utah Labor Commissioner